

**COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Small Entity)**

Docket No.
Kerr-5

In Re Application Of: **Andrew Kerr**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/900,241	July 6, 2001	Blanco, J.	001218	3738	--

Invention of ~~AXIALLY-CONNECTED STENT/GRAFT ASSEMBLY~~

APR 14 2005

04/15/2005 EFLORES 00000027 09900241

02 FC:2251

60.00 OP

COMMISSIONER FOR PATENTS:

This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☒ One month ☐ Two months ☐ Three months ☐ Four months ☐ Five months

from: **April 8, 2005** until: **May 8, 2005**
Date Date

The fee for the Appeal Brief and Extension of Time has been calculated as shown below:

Fee for Appeal Brief: \$250.00

Fee for Extension of Time: \$60.00

TOTAL FEE FOR APPEAL BRIEF AND EXTENSION OF TIME: \$310.00

The fee for the Appeal Brief and extension of time is to be paid as follows:

☐ A check in the amount of _____ for the Appeal Brief and extension of time is enclosed.

☐ Please charge Deposit Account No. _____ in the amount of _____

☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. **03-1030**

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 CFR 1.17.

☐ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. _____.

☒ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

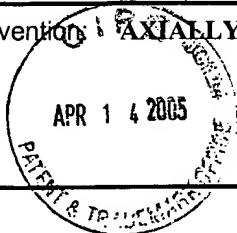
COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Small Entity)

Docket No.
Kerr-5

In Re Application Of: **Andrew Kerr**

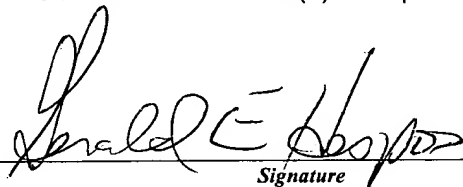
Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/900,241	July 6, 2001	Blanco, J.	001218	3738	--

Invention: **AXIALLY-CONNECTED STENT/GRAFT ASSEMBLY**



TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:


Signature

Dated: **April 12, 2005**

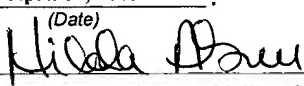
Gerald E. Hespos, Esq.
Atty. Reg. 30,066
CASELLA & HESPOS LLP
274 Madison Avenue - Suite 1703
New York, NY 10016
Tel. (212) 725-2450
Fax (212) 725-2452

Certificate of Transmission by Facsimile*

I certify that this document and authorization to charge deposit account is being facsimile transmitted to the United States Patent and Trademark Office (Fax no. _____) on _____ (Date)	
_____ Signature	
_____ Typed or Printed Name of Person Signing Certificate	

*This certificate may only be used if paying by deposit account.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a) on _____ April 12, 2005 (Date)  _____ Signature of Person Mailing Correspondence Hilda A. Abreu _____ Typed or Printed Name of Person Mailing Correspondence	
---	--

CC:



Group Art Unit: 3738
Examiner: Blanco, J.

Atty. Ref.: Kerr-5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Andrew Kerr
Appl. No. : 09/900,241
Filed : July 6, 2001
For : AXIALLY-CONNECTED STENT/GRAFT ASSEMBLY

MS Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Sir:

The Final Rejection of claims 3 and 25 was appealed with a Notice of Appeal that was received in the United States Patent and Trademark Office on February 8, 2005. This brief is submitted in triplicate and in furtherance of that appeal.

It is urged that the rejections of claims 3 and 25 be reversed and that the appealed claims be allowed.

I. Real Party in Interest

The applicant and real party in interest is Andrew Kerr.

II. Related Appeals and Interferences

There are no related appeals or interferences.

04/15/2005 EFLORES 00000027 09900241

01 FC:2402

250.00 OP

III. Status of Claims

Both claims were finally rejected under 35 USC 102(b) in view of Anderson et al., U.S. Patent No. 5,800,526.

IV. Status of Amendments

There were no amendments filed after the Final Rejection of December 28, 2004.

V. Summary of Invention

The aorta extends from the heart and through the abdomen to supply blood to abdominal organs and the iliac arteries that bring blood to the legs (page 1, lines 11-13). The aorta is prone to aneurysms, and aortic aneurysms that are not treated in a timely manner can rupture (page 1, lines 13-14). A ruptured aortic aneurysm typically is fatal due to a loss of the large volume of blood that flows through the aorta (page 1, lines 16-17).

Aneurysms can be corrected by grafts (page 1, line 18). An endovascular graft is a flexible tubular member formed from a synthetic fabric (page 2, lines 1-2) and is used in combination with a stent (page 2, line 8). The prior art stents and grafts are sutured together in a coaxial relationship so that the stents and the grafts are at least partly longitudinally coextensive (page 2, line 11 and line 21). These assemblies of stents and grafts perform well (page 2, line 22). However, the longitudinally coextensive portions of the stent and graft result in a cross-sectionally large assembly that can be difficult to insert and deliver intravascularly to the damaged section of the blood vessel (page 2, lines 23-page 3, line 2). To address these problems, the invention defined by appealed claim 25 is an "endovascular sent/graft assembly for repairing a section of a

blood vessel that has an aneurysm” (claim 25, lines 1 and 2). The blood vessel further has first and second relatively healthy sections adjacent the opposite ends of the aneurysm (claim 25, lines 2-4). The endovascular stent/graft assembly includes a substantially “tubular stent means for directly contacting said first relatively healthy section of said blood vessel” (claim 25, lines 5-6). The stent means has “opposite first and second axial ends.” (Claim 25, lines 6-7). The endovascular stent/graft assembly of claim 25 further includes “a substantially tubular graft means for directly contacting said first and second relatively healthy sections of said blood vessel and for bridging said aneurysm” (claim 25, lines 8-10). Portions of the graft means adjacent the first axial end is for directly contacting the first relatively healthy section of the blood vessel (claim 25, lines 10-12). Additionally, “said first axial end of said graft means” is defined as “being fixedly connected with said second axial end of said stent means for achieving end-to-end connection without overlap” (claim 25, lines 12-14). The “end-to-end connection without overlap enables a smaller cross-section than a connection with overlap so that the endovascular stent/graft assembly can be introduced more easily into the blood vessel” (claim 25, lines 17-20).

VI. Issues

The only issue presented for review is whether the invention defined by the claims on appeal is anticipated by Anderson et al., U.S. Patent No. 5,800,526.

VII. Grouping of Claims

Independent Claim 25 and its dependent Claim 3, are believed to stand or fall together.

VIII. Arguments

The Final Rejection – The two claims on appeal were rejected finally under 35 USC 102(b) as being anticipated by Anderson et al., U.S. Patent No. 5,800,526. The Examiner specifically referred to Figures 9, 10 and 12 of the Anderson et al. reference. The sentence bridging pages 2 and 3 of the Final Rejection asserted that the

“first axial end of graft 52 is fixedly connected with the second axial end of stent 58 *for achieving* (emphasis added to functional language) a substantially end-to-end connection (see figures; see entire document)”.

The Examiner asserted that the Anderson et al. “end-to-end connection may include overlapping (see Figures 9, 10 and 12)” but that the “end-to-end connection is also disclose/describe by Anderson et al. as an end-to-end connection without overlap” (page 3 of Final Rejection, lines 1-4). To support this interpretation, the Examiner referred to the sentence of Anderson et al. at column 11, lines 10-14 which reads:

“At least a portion of stents 56, 58 extend out of graft 52, and if the stents and grafts are joined by a butt joint, then substantially all of the stents will extend out of the graft.”

Thus, the Examiner takes the position that the

“Anderson et al. disclosure describes two end-to-end connections embodiments: (i) a lap joint (i.e., joint made by overlapping two ends) as shown in ‘*at least a portion of stents 56, 58 extend out of graft 52*’, (ii) a butt joint (i.e., joint made by fastening the parts together end-to-end without overlap) as shown in ‘*and if the stents and graft are joined by a butt joint, then substantially all of the stent will extend out of the graft*’” (page 3, of Final Rejection lines 10-15).

It is significant to note that the term "lap joint" was not used by the Examiner in any of the three Office Actions prior to the December 28, 2004 Final Rejection and is not used anywhere in the Anderson et al. reference. "Lap joint" is not a term of art for endovascular stent/graft assemblies, and neither counsel nor the applicant know what the Examiner now is referring to. The Examiner clearly is reading into Anderson et al. an interpretation of Anderson et al. that the Examiner hopes will support his rejection. In particular, if FIGS. 9-12 of Anderson et al. are a "lap joint" then perhaps the Anderson et al. "butt joint" could be an unillustrated structure that corresponds to the claimed invention.

A key question in this Appeal is: What does the Anderson et al. reference disclose? Briefly, the Anderson et al. reference shows three optional embodiments of stents, namely:

Stent 1 - FIGS. 1-7;

Stent 2 - FIG. 16; and

Stent 3 - FIG. 17.

The three optional configurations of the Anderson et al. stent share many common features. All embodiments of the Anderson et al. stents have a plurality of cylindrical rings 12. Each cylindrical ring 12 includes an alternating circumferential array of W-shaped portions 15 and U-shaped portions 17. Adjacent rings 12 are offset rotationally from one another so that the W-shaped portions 15 in one ring 12 align axially with the U-shaped portions 17 in the adjacent rings 12. The Anderson et al. stent further has connecting members 14 that extend between W-shaped portions 15 in one ring 12 and U-shaped portions 17 in the adjacent ring 12. All three of the

Anderson et al. stent embodiments share these common structural features. All three embodiments also have a larger number of small barbs for anchoring the stents to the walls of the aorta. The three embodiments differ from one another with respect to the locations of barbs on the W-shaped portions and the U-shaped portions.

Anderson et al. explain that the plurality of connecting elements interconnecting only the cylindrical ring elements that are adjacent to each other enables the expanded stent to retain its overall length without appreciable shortening (col. 4, lines 16-20). The exact placement of the stent “was heretofore critical” to ensure that the anchoring barbs would be deployed in an area of healthy tissue in the aorta (col. 6, lines 9-15). Anderson et al. avoid the problems that they attribute to their admitted prior art by providing a stent that does not shorten axially when it expands radially and by providing a stent that has a large number of barbs at spaced positions along and around the stent.

Of course, the Anderson et al. stent would be used with a graft. Anderson et al. explain that their stent can be used “with a wide variety of graft types including well known tube graft and bifurcated grafts” (col. 10, lines 4-5). The Anderson et al. reference also shows two optional connections between the stents and grafts, namely, the connection of FIGS. 8-12 and the connection of FIGS. 13-15.

The FIGS. 13-15 stent/graft connection substantially corresponds to applicant’s admitted prior art with a “stent 92 which is coaxial with and which extends the length of and beyond the graft 52” (Anderson et al. column 12, lines 12-14). FIGS. 8-12 all show a stent/graft connection where approximately one longitudinal half of one circumferential ring 12 of the stent is telescoped into the end of the graft 52.

Thus, the FIGS. 8-12 stent/graft assembly is connected so that “substantially all of the stent will extend out of the graft” (column 11, lines 13-14, emphasis added), namely all of the stent except for roughly one longitudinal half of one circumferential ring 12 of the stent. This overlap is described in Anderson et al. as being significant for proper deployment of the stent/graft assembly. In particular, the Anderson et al. reference explains with respect to FIGS. 11 and 12 that

“the stent is affixed to the distal end of the graft so that it substantially extends out of the graft, with the result being that radial expansion forces can be applied to the stent by inflating balloon 62 of catheter 60 and simultaneously applying expansion force to the graft 52.” (column 12, lines 1-6).

Thus, the portion of the circumferential ring 12 of the Anderson et al. stent that is telescoped into the graft 15 is used by Anderson et al. for “applying expansion force to the graft 52.” (column 12, line 6).

The Examiner currently admits that the Anderson et al. reference does not illustrate an end to end connection without overlap and does not specifically describe an end to end connection without overlap. However, the Examiner asserts that the “butt joint” mentioned once in Anderson et al. is the claimed “end to end connection without overlap”, and the Examiner relies on vague definitions found at onelook.com to support his position. Thus, the Final Rejection begs the question – What is a butt joint?

What is a Butt Joint? - Medical Literature - A Rule 132 Declaration filed by the inventor, Dr. Kerr, refers to an on-line search of medical literature conducted by the inventor. Copies of the relevant documents uncovered by Dr. Kerr are of record. Dr. Kerr found no reference to “butt joint” in the endovascular stent/graft literature. Butt joint is used in the dentistry literature to show a crown telescoped over a prepared tooth, as

FIG. 12 (annotated) shows a cross-sectional view of a device. The device has a central shaft (10) and a surrounding structure (11). The structure (11) is divided into two main sections: a top section (12) and a bottom section (13). The top section (12) has a textured, wavy surface (14) and a central opening (15). The bottom section (13) has a smooth, curved surface (16). The device is shown in a cross-sectional view, with the central shaft (10) and the surrounding structure (11) clearly visible. The top section (12) is labeled "overlap".

FIG. 12 (annotated) also shows a side view of a curved component. The component has a curved, arch-like shape. The dimensions are indicated by dashed lines and numbers: 1.5, 0.5, 0.5, 1.0, 1.5, 2.0, and 1.0. The component is shown in a side view, with the curved shape clearly visible.

What is a butt joint? – Patent Literature - U.S. Patent No. 6,749,628 uses “butt joint” to describe an overlapped connection of tubular members in a medical apparatus (column 26, line 65 and FIG. 29). The overlapped connection of the tubular members in FIG. 29 of U.S. Patent No. 6,749,628 looks very much like the slightly overlapped connection in FIGS. 8-12 of Anderson et al.

8

text and photographs the various types of "butt joints" used in carpentry. Carpentry butt joints do connect an end of one member to an end of another member as stated in the onelook.com and Merriam-Webster definitions relied upon by the Examiner. However, the members extend at right angles to one another in all of the illustrated butt joints.

The record also includes a section from a book entitled Cabinetmaking and Millwork by John L. Feirer. The descriptions and illustrations of a "butt joint" in the Feirer work conform to the description and illustrations of "butt joint" in the Rogowski book.

What is a butt joint? - Dictionary Definitions - The Examiner obtained from the onelook.com site the general purpose dictionary definitions with terms that were sufficiently vague to meet his interpretation of "butt joint". That site also includes the following dictionary definition that was not mentioned by the Examiner.

The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

butt joint



NOUN: A joint formed by two abutting surfaces placed squarely together.

The graphic component of the American Heritage definition clearly shows two abutting surfaces placed squarely together to define a right angle and this illustration is consistent with the other definitions that have no illustration. Three of the other general purpose dictionaries mentioned at onelook.com have links to sites with graphic components conforming to the American Heritage definition presented above.

The Examiner also referred to a “tech” dictionary definition at the onelook.com site. The only “tech” dictionary at that site is a “Dictionary of Automotive Terms”. Onelook.com also included an art dictionary that defined a butt joint as “a right angle made by joining two pieces of butting material (especially of wood) broad edge to narrow edge, without mitering)” (emphasis in original).

Dr. Kerr concluded that medical dictionaries should be given at least as much weight as the general purpose dictionaries relied upon by the Examiner. Accordingly, Dr. Kerr reviewed medical dictionaries and the record contains relevant portions of three Medical Dictionaries. Dorland’s Illustrated Medical Dictionary defines “butt” as “to bring the surfaces of two distinct objects squarely or directly into contact with each other” (emphasis added). Taber’s Cyclopedic Medical Dictionary defines “butt” as “to join two square-ended objects together” (emphasis added) Stedman’s Medical Dictionary defines “butt” as “to bring any two square-ended surfaces in contact so as to form a joint” (emphasis added). The definitions from these three medical dictionaries are fully consistent with the American Heritage illustration that shows a right angle “butt joint”. Stedman’s also has a dentistry definition that conforms precisely to the illustration presented above.

What is a butt joint? – Conclusion - The issue is not whether a definition from the applicant’s wood working book is more applicable than the definition from the Examiner’s art dictionary. Rather, the real issue is: What do Anderson et al. teach to a person skilled in this art? The Anderson et al. reference shows only a connection of two tubular members with an overlap so that the stent applies an outward “expansion force to the graft” (column 12, line 6) and the Anderson et al. reference uses the

term “butt joint” vaguely in the paragraph that describes the overlapped depiction of tubular members. U.S. Patent No. 6,749,628 also uses the term “butt joint” vaguely with reference to a figure that clearly shows two overlapped tubular members in a medical apparatus. The dentistry literature shows a similar overlapped connection. The host of other dictionary definitions now in the record, and extending from wood working books to art dictionaries, merely show that there is no clear meaning for “butt joint” that would support the Examiner’s position that Anderson et al. is referring to a specific structure other than the structure illustrated in the Anderson et al. patent.

Reliance upon a general purpose dictionary to interpret a term in a patent can lead to problems as explained in Vanderlande Industry Neederland BV v. ITC, 70 USPQ 1696 (Fed. Cir. 2004). There Vanderlande turned to Merriam Webster’s Collegiate Dictionary in an effort to define the word “glide”. The Court of Appeals for the Federal Circuit concluded, however, that Vanderlande’s reliance on “a general-usage-dictionary definition is unpersuasive” Id. at 1703. The Court explained that claims are to be construed from the vantage point of a person skilled in the relevant art. The Court ruled at page 1704 that where evidence

“demonstrates that artisans would attach a special meaning to a claim term, or, as here, would attach no meaning at all to the claim term (independent of the specification), general-usage dictionaries are rendered irrelevant with respect to that term; a general-usage dictionary cannot overcome credible art-specific evidence of the meaning or lack of meaning of a claim term”.

The Examiner’s attempt to rely upon “general purpose” dictionaries leads to precisely the problems identified in Vanderlande. For this reason, the Court of Appeals in Vanderlande emphasizes that general purpose dictionaries cannot be used to provide a meaning to a term where “credible art-specific evidence” shows a lack of

meaning for the term in the art. The Court's logic applies equally well to the "art" dictionary and the "tech" Dictionary of Automotive Terms cited by the Examiner. It is submitted that the Anderson et al. reference shows only an overlapped connection and cannot be considered to teach a structure other than the overlapped connection. The Anderson et al. reference certainly does not anticipate a claim that specifically recites no overlap.

Ease of Insertion – The claimed end-to-end connection without overlap is provided so that the claimed "assembly can be introduced more easily into the blood vessel" (claim 25, lines 19-20). The Examiner asserts that the structure allegedly described in the last ten words at column 11, line 13 and 14 of Anderson et al. is provided so that Anderson et al. can achieve "ease of introducing into a blood vessel" (page 3 of Final Rejection line 20) and this objective is attributed by the Examiner to sentences of Anderson et al. at column 10, lines 2-5 and 8-10. The sentence at column 10, lines 2-5 of Anderson et al. merely relates to the possible use of the stent with a wide variety of grafts, including a bifurcated or Y-shaped graft. The sentence at column 10, lines 8-10 merely says that "the graft system is sized so that its cross-section substantially matches that of the healthy portion of the aorta." Neither of these sentences alludes at all to ease of insertion (see Kerr Declaration, page 2, third line from bottom). The sentence of Anderson et al. between these two sentences noted in the Final Rejection refers "to the ability of the stent of the invention to expand from a very small diameter to a much larger diameter without substantial shortening." This sentence refers to the size of the stent not the stent/graft assembly. All intravascular stents are expandable and hence are larger after expansion than prior to expansion.

Anderson et al. appears to have designed a stent that will expand “without substantial shortening” (column 10, lines 7-9). This aspect of the Anderson et al. disclosure was considered by Dr. Kerr in the Rule 132 Declaration. In particular, Dr. Kerr explained that:

“The entire Anderson et al. disclosure relates to a stent that will expand without shortening. This feature can be very helpful for precisely positioning the stent in the aorta. However, a stent that expands without shortening also collapses without lengthening. This distinguishes from other commercial available stents that shorten during expansion and lengthen when collapsed. A stent that is longer in its collapsed state necessarily will have a smaller cross-section. Thus, I interpret Anderson et al. as being a compromise where a larger cross-section during introduction is tolerated so that the more precise positioning can be achieved due to the uniform length before and after expansion.”

The Significance of the Overlap - The incision required to introduce a stent/graft assembly into a patient logically is determined by the largest cross-section along the length of the stent/graft assembly. The Anderson et al. FIGS. 8-12 embodiment shows the graft overlapping approximately one longitudinal half of a circumferential ring 12 of a stent. All stents, including Anderson et al., are configured to be collapsed into a configuration where the respective interconnected members of the stent become closer together circumferentially. The graft, however, in Anderson et al. “is not stretching or deforming but is simply opening from a closed diameter to an open expanded diameter. The graft material is generally inelastic” (column 11, lines 37-39). Hence, the portion of the graft that overlaps the stent must be bunched or pleated over and around the collapsed Anderson et al. stent. This bunching or pleating adds significantly to the outside diameter of the Anderson et al. collapsed stent. The overlapping of the Anderson et al. graft onto the stent prevents the graft from collapsing

inwardly at that location even though the overlap is small longitudinally, e.g. one longitudinal half of a circumferential ring 12. In contrast, the claimed “end-to-end connection with out overlap” enables the graft to be collapsed inwardly substantially unimpeded by the stent. All of the overlapped connections shown in Anderson et al., including the connection of FIGS. 8-12 where substantially all of the stent extends out of the graft, require a much larger incision for insertion as defined by the short longitudinal section where the overlap exists. However, the claimed “end-to-end connection without overlap enables a smaller cross-section” and hence a smaller incision. This greatly simplifies the surgical procedure, reduces blood loss and shortens the recovery.

To summarize, the Anderson et al. reference has no use of the term “lap joint”, no enabling disclosure of “end-to-end connection without overlap” and no discussion at all relating to a small cross section for ease of insertion.

Requirement for Anticipation - A rejection under 35 USC 102 “requires the presence in a single prior art reference disclosure of each and every element of the claimed invention arranged as in the claim.” *In re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984). The claim in Lindenmann pertained partly to the way upstream and downstream members connected to one another. The District Court held that the patented claim was anticipated by a prior art reference. The Court of Appeals for the Federal Circuit noted several differences between the claimed invention and the prior art, including differences between the required positions of the ends of the two interconnected parts. Accordingly, the Court of Appeals for the Federal Circuit reversed a finding of invalidity

under 35 USC 102. An anticipatory reference also must be enabling *In re Paulsen*, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). The reference must be considered in its entirety and “must describe the applicant’s claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.” *In re Spada*, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The Anderson et al. reference clearly does not show any stent/graft connection that is end-to-end with no overlap. The above quoted section of the Anderson et al. statement that “if the stents and the grafts are joined by a butt joint, then substantially all of the stent will extend out of the graft” (column 11, lines 10-14) is fully consistent with the entire remainder of the Anderson et al. disclosure, including FIGS. 8-12. In particular, FIGS. 8-12 show all but one longitudinal half of one circumferential ring 12 of a stent extending out of a graft to meet the brief mentioning of “substantially all of the stent extending out of the graft.” Furthermore, the single vague reference to “butt joint” in Anderson et al. can have any of a host of possible meanings including the connection depicted in FIGS. 8-12. Accordingly, it is submitted that Anderson et al. is not enabling and is not anticipatory with respect to the structure that is clearly defined in claim 25. The problems associated with using general purpose dictionaries is described above. However, the Examiner’s need to rely upon the general purpose dictionaries supports the position that the Anderson et al. reference does not anticipate the claimed invention. It is error to build anticipation on a combination of references. *Scripps Clinic v. Genetech Inc.* 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

The Examiner's conclusions regarding anticipation are based on isolated words and phrases in the Anderson et al. reference. The Examiner has attempted to weave these isolated snippets into a theory that would support an anticipation rejection. However, the above cited *in re Spada* case explains that the reference must be considered in its entirety and must be interpreted in view of "a person of ordinary skill in the field of the invention". The record includes a Rule 132 Declaration executed by Dr. Andrew Kerr. Dr. Kerr declares that he has performed many interventional procedures where he has implanted endovascular stents. The Declaration of Dr. Kerr quotes from the portion of the Anderson et al. reference that is relied upon to support the rejection. The Declaration provides very cogent evidence that Dr. Kerr, as a skilled artisan, interprets the quoted section of Anderson et al. as referring to the deployed state of the graft and having "nothing to do with introduction." Dr. Kerr, as a skilled artisan, also declares that he interprets the Anderson et al. reference as accepting a large cross-section for introduction to achieve the benefit of maintaining a constant length before and after expansion. The Examiner has never responded to the facts presented in the Rule 132 Declaration.

A successful argument against an anticipation rejection under 35 USC 102 often leads to questions of obviousness under 35 USC 103. Obviousness has not been raised here. However, an obviousness rejection would require something in Anderson et al. to lead the skilled artisan from Anderson et al. to the claimed invention. This would require the skilled artisan to revise Anderson et al. from the FIGS. 8-12 arrangement where there is an overlap between the stent and graft to the claimed invention where there is "end-to-end connection without overlap." However, the portion

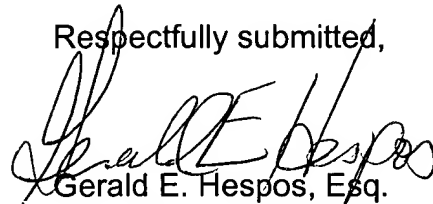
of Anderson et al. that describes the FIGS. 11 and 12 overlap notes that radial expansion forces applied to the stent are effective for “simultaneously applying expansion force to the graft” (col. 12, lines 5 and 6). Nothing in Anderson et al. would motivate the skilled artisan to sacrifice the apparent benefit obtained by the Anderson et al. overlap. Additionally, the Rule 132 affidavit provides a fairly cogent explanation of why Anderson et al. appear willing to accept a cross-sectionally larger stent for the benefit of achieving a stent that does not shorten as it expands. Thus, nothing in Anderson et al. would lead the skilled artisan from the connection that is disclosed therein to the claimed invention.

IX. Conclusion

The entire Anderson et al. disclosure has been interpreted by a person skilled in this art as a design that will accept a larger cross-section and hence larger incision for the apparent benefit of having a substantially constant stent length both before and after expansion. The Anderson et al. reference has no teaching of the claimed end-to-end connection with no overlap. The phrase “butt joint”, used once in Anderson et al., has a myriad of meanings, and no meaning in the relevant art. That one vague mention of an ambiguous term cannot be bootstrapped into an enabling disclosure to support a rejection under 35 USC 102. Furthermore, nothing would lead the skilled artisan from Anderson et al. to the claimed invention. Accordingly, the Anderson et al. reference cannot be considered to teach or suggest the invention

defined by the claims on appeal. For the reasons stated above, the Final Rejection should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald E. Hespos", is written over the typed name.

Gerald E. Hespos, Esq.

Atty. Reg. No. 30,066

Customer No. 001218

CASELLA & HESPOS LLP

274 Madison Avenue - Suite 1703

New York, NY 10016

Tel. (212) 725-2450

Fax (212) 725-2452

Date: April 12, 2005

APPENDIX

3. (previously presented) The endovascular stent/graft assembly of claim 25, wherein the first axial end of the tubular graft means and the second axial end of the stent means are affixed by bonding.

25. (currently amended) An endovascular stent/graft assembly for repairing a section of a blood vessel that has an aneurysm, said blood vessel having first and second relatively healthy sections adjacent and on opposite ends of said aneurysm, said assembly comprising:

a substantially tubular stent means for directly contacting said first relatively healthy section of said blood vessel, said stent means having opposite first and second axial ends; and

a substantially tubular graft means for directly contacting said first and second relatively healthy sections of said blood vessel and for bridging said aneurysm, said graft means having a first axial end, portions of said graft means adjacent said first axial end being for directly contacting said first relatively healthy section of said blood vessel, said first axial end of the graft means being fixedly connected with the second axial end of the stent means for achieving an end-to-end connection without overlap, said graft means further having a second axial end for directly contacting said second relatively healthy section of said blood vessel, such that portions of said graft means between said first and second axial ends bridge said aneurysm of said blood vessel, whereby the end-to-end connection without overlap enables a smaller cross-section than a connection with overlap so that the endovascular stent/graft assembly can be introduced more easily into the blood vessel.